

# **HEALTH AND SAFETY CODE**

## **Part 6**

### **FACILITIES LOAN INSURANCE AND FINANCING**

#### **Chapter 1**

#### **HEALTH FACILITIES CONSTRUCTION LOAN INSURANCE**

##### **Article 1**

**129000.** This chapter may be cited as the "California Health Facility Construction Loan Insurance Law."

**129005.** The purpose of this chapter is to provide, without cost to the state, an insurance program for health facility construction, improvement, and expansion loans in order to stimulate the flow of private capital into health facilities construction, improvement, and expansion and in order to rationally meet the need for new, expanded and modernized public and nonprofit health facilities necessary to protect the health of all the people of this state. The provisions of this chapter are to be liberally construed to achieve this purpose.

**129010.** Unless the context otherwise requires, the definitions in this section govern the construction of this chapter and of Section 32127.2.

(a) "Bondholder" means the legal owner of a bond or other evidence of indebtedness issued by a political subdivision or a nonprofit corporation.

(b) "Borrower" means a political subdivision or nonprofit corporation that has secured or intends to secure a loan for the construction of a health facility.

(c) "Construction, improvement, or expansion" or "construction, improvement, and expansion" includes construction of new buildings, expansion, modernization, renovation, remodeling and alteration of existing buildings, acquisition of existing buildings or health facilities, and initial or additional equipping of any of these buildings.

In connection therewith, "construction, improvement, or expansion" or "construction, improvement, and expansion" includes the cost of construction or acquisition of all structures, including parking facilities, real or personal property, rights, rights-of-way, the cost of demolishing or removing any buildings or structures on land so acquired, including the cost of acquiring any land where the buildings or structures may be moved, the cost of all machinery and equipment, financing charges, interest (prior to, during and for a period after completion of the construction), provisions for working capital, reserves for principal and interest and for extensions, enlargements, additions, replacements, renovations and improvements, cost of engineering, financial and legal services, plans, specifications, studies, surveys, estimates of cost and of revenues, administrative expenses, expenses necessary or incident to determining the feasibility or practicability of constructing or incident to the construction; or the financing of the construction or acquisition.

(d) "Commission" means the California Health Policy and Data Advisory Commission.

(e) "Committee" means the Advisory Loan Insurance Committee.

(f) "Debenture" means any form of written evidence of indebtedness issued by the State Treasurer pursuant to this chapter, as authorized by Section 4 of Article XVI of the California Constitution.

(g) "Fund" means the Health Facility Construction Loan Insurance Fund.

(h) "Health facility" means any facility providing or designed to provide services for the acute, convalescent, and chronically ill and impaired, including, but not limited to, public health centers, community mental health centers, facilities for the developmentally disabled, nonprofit community care facilities that provide care, habilitation, rehabilitation or treatment to developmentally disabled persons, facilities for the treatment of chemical dependency, including a community care facility, licensed pursuant to Chapter 3 (commencing with Section 1500) of Division 2, a clinic, as defined pursuant to Chapter 1 (commencing with Section 1200) of Division 2, an alcoholism recovery facility, defined pursuant to former Section 11834.11, and a structure located adjacent or attached to another type of health facility and that is used for storage of materials used in the treatment of chemical dependency, and general tuberculosis, mental, and other types of hospitals and related facilities, such as laboratories, outpatient departments, extended care, nurses' home and training facilities, offices and central service facilities operated in connection with hospitals, diagnostic or treatment centers, extended care facilities, nursing homes, and rehabilitation facilities. "Health facility" also means an adult day health center and a multilevel facility. Except for facilities for the developmentally disabled, facilities for the treatment of chemical dependency, or a multilevel facility, or as otherwise provided in this subdivision, "health facility" does not include any institution furnishing primarily domiciliary care.

"Health facility" also means accredited nonprofit work activity programs as defined in subdivision (e) of Section 19352 and Section 19355 of the Welfare and Institutions Code, and nonprofit community care facilities as defined in Section 1502, excluding foster family homes, foster family agencies, adoption agencies, and residential care facilities for the elderly.

Unless the context dictates otherwise, "health facility" includes a political subdivision of the state or nonprofit corporation that operates a facility included within the definition set forth in this subdivision.

(i) "Office" means the Office of Statewide Health Planning and Development.

(j) "Lender" means the provider of a loan and its successors and assigns.

(k) "Loan" means money or credit advanced for the costs of construction or expansion of the health facility, and includes both initial loans and loans secured upon refinancing and may include both interim, or short-term loans, and long-term loans. A duly authorized bond or bond issue, or an installment sale agreement, may constitute a "loan."

(l) "Maturity date" means the date that the loan indebtedness would be extinguished if paid in accordance with periodic payments provided for by the terms of the loan.

(m) "Mortgage" means a first mortgage on real estate. "Mortgage" includes a first deed of trust.

(n) "Mortgagee" includes a lender whose loan is secured by a mortgage. "Mortgagee" includes a beneficiary of a deed of trust.

(o) "Mortgagor" includes a borrower, a loan to whom is secured by a mortgage, and the trustor of a deed of trust.

(p) "Nonprofit corporation" means any corporation formed under or subject to the Nonprofit Public Benefit Corporation Law (Part 2 (commencing with Section 5110) of Division 2 of Title 1

of the Corporations Code) that is organized for the purpose of owning and operating a health facility and that also meets the requirements of Section 501(c)(3) of the Internal Revenue Code.

(q) "Political subdivision" means any city, county, joint powers entity, local hospital district, or the California Health Facilities Authority.

(r) "Project property" means the real property where the health facility is, or is to be, constructed, improved, or expanded, and also means the health facility and the initial equipment in that health facility.

(s) "Public health facility" means any health facility that is or will be constructed for and operated and maintained by any city, county, or local hospital district.

(t) "Adult day health center" means a facility defined under subdivision (b) of Section 1570.7, that provides adult day health care, as defined under subdivision (a) of Section 1570.7.

(u) "Multilevel facility" means an institutional arrangement where a residential facility for the elderly is operated as a part of, or in conjunction with, an intermediate care facility, a skilled nursing facility, or a general acute care hospital. "Elderly," for the purposes of this subdivision, means a person 60 years of age or older.

(v) "State plan" means the plan described in Section 129020.

**129015.** The office shall administer this chapter and shall make all regulations necessary to implement the provisions and achieve the purposes stated herein. The commission, as authorized by this chapter and by Section 129460, shall advise and consult with the office in carrying out the administration of this chapter.

**129020.** The office shall implement the loan insurance program for the construction, improvement, and expansion of public and nonprofit corporation health facilities so that, in conjunction with all other existing facilities, the necessary physical facilities for furnishing adequate health facility services will be available to all the people of the state.

Every odd-numbered year the office shall develop a state plan for use under this chapter. The plan shall include an overview of the changes in the health care industry, an overview of the financial status of the fund and the loan insurance program implemented by the office, a statement of the guiding principles of the loan insurance program, an evaluation of the program's success in meeting its mission as outlined in Section 129005, a discussion of administrative, procedural, or statutory changes that may be needed to improve management of program risks or to ensure the program effectively addresses the health needs of Californians, and the priority needs to be addressed by the loan insurance program.

The health facility construction loan insurance program shall provide for health facility distribution throughout the state in a manner that will make all types of health facility services reasonably accessible to all persons in the state according to the state plan.

**129022.** Applications submitted to the office shall be signed under penalty of perjury by the applicant.

**129030.** The proceeds of all loans insured pursuant to this chapter shall be disbursed only upon order of the office or its designated agent. The office shall make regulations to insure the security of these proceeds.

**129035.** From time to time the office or its designated agent shall inspect each project for which loan insurance was approved, as needed, and if the inspection so warrants, the office or agent shall certify that the work has been performed upon the project, or purchases have been made, in accordance with the approved plans and specifications, and that payment of an installment of the loan proceeds is due to the borrower. The office shall charge the borrower a fee for these inspections and certifications, that in no instance shall exceed four dollars (\$4) for each one thousand dollars (\$1,000) of the borrower's loan that is insured. These fees shall be deposited in the fund.

**129040.** (Current) The office shall establish an annual premium charge for the insurance of hospital construction loans under this chapter, and this charge shall be deposited in the fund. The annual premium charge shall not be more than an amount equivalent to one-half of 1 percent per annum of the average amount of the principal obligation of the loan during the year in which the charge is made, without taking into account delinquent payments. The office may reduce or eliminate the premium charges for insured loans outstanding for a period in excess of three years. These premium charges shall be payable by the borrower, or, where practicable, by the lender on account of a delinquent borrower, to the office at times that shall be established by the office. The office may require the payment of one or more premium charges at the time the loan is insured at a discount rate as it may prescribe not in excess of the interest rate specified in the loan. In the event that the principal obligation of any insured loan is paid in full prior to the maturity as the office shall determine to be equitable, of the current unearned premium charges theretofore paid by the borrower.

**129040.** (Effective January 1, 2001) The office shall establish a premium charge for the insurance of loans under this chapter, and this charge shall be deposited in the fund. A one-time nonrefundable premium charge shall be paid at the time the loan is insured. The premium rate may vary based upon the assessed level of relative financial risk determined pursuant to Section 129051, but shall in no event be greater than 3 percent. The amount of premium shall be computed on the basis of the application of the rate to the total amount of principal and interest payable over the term of the loan. Amendments made to this section by this bill shall take effect on January 1, 2001.

**129045.** The office shall annually report to the Legislature the financial status of the program and its insured portfolio, including the status of all borrowers in each stage of default and the office's efforts to collect from borrowers that have defaulted on their debt service payments.

**129048.** The Legislature finds and declares all of the following:

(a) The State of California has a compelling interest in ensuring that adequate health facilities that are able to withstand seismic events are available to care for patients, especially in the event of a disaster.

(b) Hospitals are required, under the Alfred E. Alquist Hospital Facilities Seismic Safety Act of 1983 (Chapter 1 (commencing with Section 129675) of Part 7), to improve, or remove from acute care service, buildings that pose a significant safety risk of collapse and danger to the public by January 1, 2008.

(c) Hospitals are also required by that act to repair, rebuild, or remove from service, buildings that may not be repairable or functional following strong ground motion, by January 1, 2030.

(d) California hospitals should be enabled to participate in programs that provide financial assistance for hospital construction and retrofitting.

(e) The United States Department of Housing and Urban Development operates a HUD 242 loan insurance program, through which hospitals can access facility mortgage insurance and lower interest rates.

(f) As a condition for participating in the HUD 242 program, a hospital must have a state-commissioned or conducted feasibility study of a hospital construction project.

**129049.** (a) The office may, at the request of a hospital, commission an independent study of market need and feasibility, as required by the United States Department of Housing and Urban Development, as part of an application for mortgage insurance for hospitals pursuant to Section 1715z-7 of Title 12 of the United States Code, or any other federal mortgage insurance program for health-related facilities.

(b) The cost of the feasibility study permitted pursuant to subdivision (a) shall be paid for by the office from reimbursements received from the applicant.

(c) Notwithstanding any other provision of law, the office may directly retain independent feasibility consultants and require a deposit from the applicant for the entire cost of the services at the time they are requested.

(d) The office shall charge applicants a fee for the reasonable costs of administering this article.

(e) The program provided for in this article shall be administered in conformance with the requirements of the United States Department of Housing and Urban Development for feasibility studies authorized by this section and the applicable requirements of state law pertaining to contracts.

## **Article 2**

**129050.** A loan shall be eligible for insurance under this chapter if all of the following conditions are met:

(a) The loan shall be secured by a first mortgage, first deed of trust, or other first priority lien on a fee interest of the borrower and any other security agreement that the office may require subject only to those conditions, covenants and restrictions, easements, taxes, and assessments of record approved by the office, and other liens securing debt insured under this chapter.

(b) The borrower obtains an American Land Title Association title insurance policy with the office designated as beneficiary, with liability equal to the amount of the loan insured under this chapter, and with additional endorsements that the office may reasonably require.

(c) The proceeds of the loan shall be used exclusively for the construction, improvement, or expansion of the health facility, as approved by the office under Section 129020. However, loans insured pursuant to this chapter may include loans to refinance another prior loan, whether or not state insured and without regard to the date of the prior loan, if the office determines that the prior loan would have been eligible for insurance under this chapter at the time it was made. The office may not insure a loan for a health facility that the office determines is not needed pursuant to subdivision (k).

(d) The loan shall have a maturity date not exceeding 30 years from the date of the beginning of amortization of the loan, except as authorized by subdivision (e), or 75 percent of the office's estimate of the economic life of the health facility, whichever is the lesser.

(e) The loan shall contain complete amortization provisions requiring periodic payments by the borrower not in excess of its reasonable ability to pay as determined by the office. The office shall permit a reasonable period of time during which the first payment to amortization may be waived on agreement by the lender and borrower. The office may, however, waive the amortization requirements of this subdivision and of subdivision (g) of this section when a term loan would be in the borrower's best interest.

(f) The loan shall bear interest on the amount of the principal obligation outstanding at any time at a rate, as negotiated by the borrower and lender, as the office finds necessary to meet the loan money market. As used in this chapter, "interest" does not include premium charges for insurance and service charges if any. Where a loan is evidenced by a bond issue of a political subdivision, the interest thereon may be at any rate the bonds may legally bear.

(g) The loan shall provide for the application of the borrower's periodic payments to amortization of the principal of the loan.

(h) The loan shall contain those terms and provisions with respect to insurance, repairs, alterations, payment of taxes and assessments, foreclosure proceedings, anticipation of maturity, additional and secondary liens, and other matters the office may in its discretion prescribe.

(i) The loan shall have a principal obligation not in excess of an amount equal to 90 percent of the total construction cost.

(j) The borrower shall offer reasonable assurance that the services of the health facility will be made available to all persons residing or employed in the area served by the facility.

(k) The office has determined that the facility is needed by the community to provide the specified services. In making this determination, the office shall do all of the following:

(1) Require the applicant to describe the community needs the facility will meet and provide data and information to substantiate the stated needs.

(2) Require the applicant, if appropriate, to demonstrate participation in the community needs assessment required by Section 127350 of the Health and Safety Code.

(3) Survey appropriate local officials and organizations to measure perceived needs and verify the applicant's needs assessment.

(4) Use any additional available data relating to existing facilities in the community and their capacity.

(5) Contact other state and federal departments that provide funding for the programs proposed by the applicant to obtain those departments' perspectives regarding the need for the facility. Additionally, the office shall evaluate the potential effect of proposed health care reimbursement changes on the facility's financial feasibility.

(6) Consider the facility's consistency with the Cal-Mortgage state plan.

(l) In the case of acquisitions, a project loan shall be guaranteed only for transactions not in excess of the fair market value of the acquisition.

Fair market value shall be determined, for purposes of this subdivision, pursuant to the following procedure, that shall be utilized during the office's review of a loan guarantee application:

(1) Completion of a property appraisal by an appraisal firm qualified to make appraisals, as determined by the office, before closing a loan on the project.

(2) Evaluation of the appraisal in conjunction with the book value of the acquisition by the office. When acquisitions involve additional construction, the office shall evaluate the proposed construction to determine that the costs are reasonable for the type of construction proposed. In those cases where this procedure reveals that the cost of acquisition exceeds the current value of a facility, including improvements, then the acquisition cost shall be deemed in excess of fair market value.

(m) Notwithstanding subdivision (i), any loan in the amount of five million dollars (\$5,000,000) or less may be insured up to 95 percent of the total construction cost.

In determining financial feasibility of projects of counties pursuant to this section, the office shall take into consideration any assistance for the project to be provided under Sections 14085.5 and 16715 of the Welfare and Institutions Code or from other sources.

It is the intent of the Legislature that the office endeavor to assist counties in whatever ways are possible to arrange loans that will meet the requirements for insurance prescribed by this section.

(n) The project's level of financial risk meets the criteria in Section 129051.

**129051.** (a) The office shall develop and implement a system for assessing the relative financial risk of the applicant. The system shall include, but is not limited to, an assessment of the applicant's financial strength, credit history, security for the loan, cash-flow, and ability to repay the debt.

(b) The office shall establish a maximum acceptable level of financial risk for the projects it insures. The office may only approve a project if its risk level is below the established maximum, except as provided in subdivision (c).

(c) The office may approve a project with a level of insurance risk that exceeds the established maximum if the office determines that the project meets a significant community need or will be a sole community provider.

**129052.** A pledge by or to the office of, or the grant to the office of a security interest in, revenues, moneys, accounts, accounts receivable, contract rights, general intangibles, documents, instruments, chattel paper, and other rights to payment of whatever kind made by or to the office pursuant to the authority granted in this chapter shall be valid and binding from the time the pledge is made for the benefit of pledgees and successors thereto. The revenues, moneys, accounts, accounts receivable, contract rights, general intangibles, documents, instruments, chattel paper, and other rights to payment of whatever kind pledged by or to the office or its assignees shall immediately be subject to the lien of the pledge without physical delivery or further act. The lien of such pledge shall be valid and binding against all parties, irrespective of whether the parties have notice of the lien. The indenture, trust agreement, resolution, or another

instrument by which such pledge is created need not be recorded or the security interest otherwise perfected.

**129055.** In order to comply with subdivision (j) of Section 129050, any borrower that is certified for reimbursement for cost of care under Chapter 7 (commencing with Section 14000) of Part 3 of Division 9 of the Welfare and Institutions Code shall demonstrate that its facility is used by persons for whom the cost of care is reimbursed under that chapter, in a proportion that is reasonable based upon the proportion of Medi-Cal patients in the community served by the borrower and by persons for whom the costs of care is reimbursed under Title XVIII of the federal Social Security Act in a proportion that is reasonable based upon the proportion of Medicare patients in the community served by the borrower.

For the purposes of this chapter, the community means the service areas or patient populations for which the health facility provides health care services, unless the office determines that, or the borrower demonstrates to the satisfaction of the office that, a different definition is more appropriate for the borrower's facility.

**129060.** Subdivisions (b) and (c) of Section 129355 shall apply to any residential or nonresidential alcoholism or drug abuse recovery or treatment program or facility, as certified under Section 11831.5, or licensed under former Section 11834.19; and any facility that provides an organized program of therapeutic, social, and health activities and services to persons with functional impairments, as licensed under Section 1576.

**129065.** As part of its assurance under subdivision (j) of Section 129050, any borrower that is a general acute care hospital or acute psychiatric hospital shall agree to the following actions:

(a) To advise each person seeking services at the borrower's facility as to the person's potential eligibility for Medi-Cal and Medicare benefits or benefits from other governmental third party payers.

(b) To make available to the office and to any interested person a list of physicians with staff privileges at the borrower's facility, that includes:

- (1) Name.
- (2) Speciality.
- (3) Language spoken.
- (4) Whether takes Medi-Cal and Medicare patients.
- (5) Business address and phone number.

(c) To inform in writing on a periodic basis all practitioners of the healing arts having staff privileges in the borrower's facility as to the existence of the facility's community service obligation. The required notice to practitioners shall contain a statement, as follows:

"This hospital has agreed to provide a community service and to accept Medi-Cal and Medicare patients. The administration and enforcement of this agreement is the responsibility of the Office of Statewide Health Planning and Development and this facility."

(d) To post notices in the following form, that shall be multilingual where the borrower serves a multilingual community, in appropriate areas within the facility, including but not limited to, admissions offices, emergency rooms, and business offices:



## NOTICE OF COMMUNITY SERVICE OBLIGATION

“This facility has agreed to make its services available to all persons residing or employed in this area. This facility is prohibited by law from discriminating against Medi-Cal and Medicare patients. Should you believe you may be eligible for Medi-Cal or Medicare, you should contact our business office (or designated person or office) for assistance in applying. You should also contact our business office (or designated person or office) if you are in need of a physician to provide you with services at this facility. If you believe that you have been refused services at this facility in violation of the community service obligation you should inform (designated person or office) and the Office of Statewide Health Planning and Development.”

The borrower shall provide copies of this notice for posting to all welfare offices in the county where the borrower's facility is located.

**129070.** In the event the borrower cannot demonstrate that it meets the requirement of Section 129055, it may nonetheless be eligible for a loan under this chapter if it presents a plan that is satisfactory to the office, that details the reasonable steps and timetables that the borrower agrees to take to bring the facility into compliance with Section 129055.

**129075.** (a) Each borrower shall provide any reports as may be required of it by Part 5 (commencing with Section 127675), from which the office shall determine the borrower's compliance with subdivision (j) of Section 129050.

(b) If a report indicates noncompliance with subdivision (j) of Section 129050, Section 129055, or Section 129065, the office shall require the borrower to submit a plan detailing the steps and timetables the borrower will take to bring the facility into compliance.

(c) The office shall annually report to the Legislature the extent of the borrowers' compliance with their community service obligations pursuant to subdivision (j) of Section 129050, Section 129055, and Section 129065.

**129080.** The office may impose additional appropriate remedies and sanctions against a borrower when any of the following occurs:

(a) The office determines that the annual compliance report required in Section 129075 indicates that the borrower is out of compliance with subdivision (j) of Section 129050.

(b) A facility fails to carry out the actions agreed to in a plan approved by the office pursuant to Section 129070.

(c) The facility fails to submit compliance reports as required by Section 129075. The additional remedies include referring the violation to the office of Attorney General of California for legal action authorized under existing law or other remedy at law or equity.

However, the remedies obtainable by legal action shall not include withdrawal or cancellation of the loan insurance provided under this chapter.

**129085.** (a) If a borrower is unable to comply with subdivision (j) of Section 129050 due to selective provider contracting under the Medi-Cal program, and the office has determined the borrower has negotiated in good faith but was not awarded a contract, the borrower may be eligible for insurance under this chapter as provided in subdivision (b).

(b) The office may determine that a noncontracting borrower shall be considered as meeting the requirements of subdivision (j) of Section 129050 if the borrower otherwise provides a community service in accordance with regulations adopted by the office. The regulations shall describe alternative methods of meeting the obligation, that may include, but not be limited to, providing free care, charity care, trauma care, community education, or primary care outreach and care to the elderly, in amounts greater than the community average. The regulations shall include a requirement that a general acute care hospital, that is not a small and rural hospital as defined in former Section 442.2, shall have, and continue to maintain, a 24-hour basic emergency medical service with a physician on duty, if it provided this service on January 1, 1990. The office shall have the authority to waive this requirement upon a determination by the director that this requirement would create a hardship for the hospital, be inconsistent with regionalization of emergency medical services, or not be in the best interest of the population served by the hospital.

**129087.** The office shall develop and maintain a formal system of monitoring borrowers, in order to assist the office in detecting at the earliest possible date those borrowers who are experiencing financial difficulties. This system shall include, but shall not be limited to, all of the following:

(a) A method of tracking the receipt of information that borrowers are required by law and regulatory agreement to submit to the office.

(b) A process for thoroughly reviewing borrowers' financial statements, budgets, auditor's management letters, and health facility utilization trends.

(c) Timely and structured site visits to insured facilities.

**129090.** Pursuant to this chapter, political subdivisions and nonprofit corporations may apply for state insurance of needed construction, improvement, or expansion loans for construction, remodeling, or acquisition of health facilities to be or already owned, established, and operated by them as provided in this chapter.

Applications shall be submitted to the office by the nonprofit corporation or political subdivision authorized to construct and operate a health facility. Each application shall conform to the requirements of the office, shall be submitted in the manner and form prescribed by the office, and shall be accompanied by an application fee of one-half of 1 percent of the amount of the loan applied for, but in no case shall the application fee exceed five hundred dollars (\$500). The fees shall be deposited by the office in the fund and used to defray the office's expenditures in the administration of this chapter.

**129092.** Notwithstanding any other provision of law, upon the application of a borrower for insurance, the office shall perform a feasibility study relating to the proposed project, the cost of which shall be paid by the applicant. The office may retain independent consultants and require

a deposit from the applicant for such services, upon submission of the application. This section shall take effect on January 1, 2001.

**129095.** (a) The office shall not regulate, impose requirements on, or require approval by the office of a professional, or a fee charged by a professional, used by applicants for the initial application for loan insurance. The choice of any professional and the funding source used shall be left entirely to the participants.

(b) For purposes of this section, “professional” includes, but is not limited to, an underwriter, bond counsel, or consultant.

(c) Nothing in this section shall prohibit the office, in the event of defaults, from taking any action authorized under this chapter to protect the financial interest of the state.

**129100.** Every applicant for insurance shall be afforded an opportunity for a fair hearing before the commission upon 10 days’ written notice to the applicant. If the office, after affording reasonable opportunity for development and presentation of the application and after receiving the advice of the commission, finds that an application complies with the requirements of this article and of Section 129020 and is otherwise in conformity with the state plan, it may approve the application for insurance. The office shall consider and approve applications in the order of relative need set forth in the state plan in accordance with Section 129020. Judicial review of a final decision made under this section may be had by filing a petition for writ of mandate. Any petition shall be filed within 30 days after the date of the final decision of the office.

**129105.** The office may upon application of the borrower insure any loan that is eligible for insurance under this chapter, and upon the terms prescribed by the office, may make commitments for the insuring of the loans prior to their date of execution or disbursement thereon. The decision to grant loan insurance upon an application of the borrower is within the discretion of the director of the office.

Showing need for the project or meeting the eligibility requirements for loan insurance and establishing financial feasibility of the project or recommendation for approval from the committee does not create any entitlement to loan insurance.

**129110.** Any contract of insurance executed by the office under this chapter shall be conclusive evidence of the eligibility of the loan for insurance and the validity of any contract of insurance so executed shall be incontestable from the date of the execution of the contract, except in case of fraud or misrepresentation on the part of the lender.

### **Article 3**

**129125.** In any case when the lender under a loan to a nonprofit corporation insured under this chapter shall have foreclosed and taken possession of the property under a mortgage in accordance with regulations of, and within a period to be determined by the office, or shall, with the consent of the office, have otherwise acquired the property from the borrower after default,

the lender shall be entitled to receive the benefit of the insurance as provided in this section, upon (a) the prompt conveyance to the office of title to the property that meets the requirements of the regulations of the office in force at the time the loan was insured, and that is evidenced in the manner prescribed by the regulations, and (b) the assignment to the office of all claims of the lender against the borrower or others arising out of the loan transaction or foreclosure proceedings except claims that may have been released with the consent of the office. Upon the conveyance and assignment, the office shall notify the Treasurer, who shall issue to the lender debentures having a total face value equal to the outstanding value of the loan.

For the purposes of this section, the outstanding value of the loan shall be determined, in accordance with the regulations prescribed by the office, by (a) adding to the amounts of the original principal obligation of the loan and interest that are accrued and unpaid the amount of all payments that have been made by the lender for the following: taxes and assessments, ground rents, water rates, and other liens that are prior to the mortgage; charges for the administration, operation, maintenance and repair of the health facility property; insurance on the project property, loan insurance premiums, and any tax imposed by a city or county upon any deed or other instrument by which the property was acquired by the lender and transferred or conveyed to the office; and the costs of foreclosure or of acquiring the property by other means actually paid by the lender and approved by the office; and by (b) deducting from the total amount any amounts received by the lender after the borrower's default on account of the loans or as rent or other income from the property.

**129130.** In any case when a political subdivision defaults on the payment of interest or principal accrued and due on bonds or other evidences of indebtedness insured under this chapter, debentures in an amount equal to the outstanding original principal obligation and interest on the bonds that were accrued and unpaid on the date of default and bearing interest at a rate equal to and payment schedule identical with those of the bonds shall be issued by the Treasurer upon notification thereof by the office to the bondholders upon the surrender of the bonds to the office.

In any case in which a hospital district defaults on the payment of interest or principal accrued and due on an insured loan secured by a first mortgage, first deed of trust, or other security agreement as authorized by Section 32127.2, debentures in an amount equal to the outstanding original principal obligation and interest on the bonds that were accrued and unpaid on the date of default and bearing interest at a rate equal to and payment schedule identical with those of the bonds shall be issued by the Treasurer upon notification thereof by the office to the bondholders upon surrender of the bonds to the office after the state has enforced its rights under the first mortgage, first deed of trust, or other security agreement.

**129135.** Notwithstanding any requirement contained in this chapter relating to acquisition of title and possession of the project property by the lender and its subsequent conveyance and transfer to the office, and for the purpose of avoiding unnecessary conveyance expense in connection with payment of insurance benefits under the provisions of this chapter, the office may, subject to regulations that it may prescribe, permit the lender to tender to the office a satisfactory conveyance of title and transfer of possession direct from the borrower or other appropriate grantor and to pay to the lender the insurance benefits to which it would otherwise be entitled if the conveyance had been made to the lender and from the lender to the office.

**129140.** Upon receiving notice of the default of any loan insured under this chapter, the office, in its discretion and for the purpose of avoiding foreclosure under Section 129125 and notwithstanding the fact that it has previously approved a request of the lender for extensions of the time for curing the default and of the time for commencing foreclosure proceedings or for otherwise acquiring title to the project property, or has approved a modification of the loan for the purpose of changing the amortization provisions by recasting the unpaid balance, may acquire the loan and security agreements securing the loans upon the issuance to the lender of debentures in an amount equal to the unpaid principal balance of the loan plus any accrued unpaid loan interest plus reimbursement for the costs and attorney's fees of the lender enumerated in Section 129125.

After the acquisition of the loan and security interests therefor by the office, the lender shall have no further rights, liabilities, or obligations with respect thereto. The provisions of Section 129125 relating to the issuance of debentures incident to the acquisition of foreclosed properties shall apply with respect to debentures issued under this section, and the provisions of this chapter relating to the rights, liabilities, and obligations of a lender shall apply with respect to the office when it has acquired an insured loan under this section, in accordance with and subject to any regulations prescribed by the office modifying the provisions to the extent necessary to render their application for these purposes appropriate and effective.

**129145.** Notwithstanding any other provision of this chapter, after the office determines that the lender and borrower have exhausted all reasonable means of curing any default, the office within its discretion may, when it is in the best interests of the state, the borrower, and the lender, cure the default of the borrower by making payment from the fund directly to the lender of any amounts of the original principal obligation and interest of the loan that are accrued and unpaid. The payment shall be secured by an assignment to the office of a pro rata share of the security agreements made to the lender and, upon the payment, the borrower shall become liable for repayment of the amount thereof to the office over a period and at a rate of interest as shall be determined by the office.

**129150.** The office may at any time, under the terms and conditions that it may prescribe, consent to the lender's release of the borrower from its liability under the loan or the security agreement securing the loan, or consent to the release of parts of the project property from the lien of any security agreement.

**129152.** If a borrower fails to submit a required report, or upon any other default of any regulatory or contractual term or covenant, whether or not a default has been declared, the office first shall informally communicate with the borrower. If the borrower fails to submit the required report or otherwise cure the default, the office shall issue a formal demand in writing stating the nature of the default and requiring the borrower to submit a detailed plan of correction that is acceptable to the office. If the borrower fails to either submit a plan, or timely cure the default, the office shall perform an onsite visit. If the office determines the borrower is not

making sufficient progress in submitting any required reports or otherwise curing any default, the office may require the borrower, at the borrower's expense, to employ an independent consultant or professional, acceptable to the office, to conduct a program audit. If the borrower fails to adopt the recommendations of the independent consultant or professional made in the program audit, or if the borrower fails to otherwise timely cure the default, the office shall have all the remedies set forth in the Section 129173.

**129155.** Debentures issued under this chapter shall be in the form and denomination, subject to the terms and conditions, and include provisions for redemption, if any, as may be prescribed by the office with the approval of the Treasurer, and may be in coupon or registered form.

**129160.** (a) All debentures issued under this chapter to any lender or bondholder shall be executed in the name of the fund as obligor, shall be signed by the State Treasurer, and shall be negotiable. Pursuant to Sections 129125 and 129130, all debentures shall be dated as of the date of the institution of foreclosure proceedings or as of the date of the acquisition of the property after default by other than foreclosure, or as of another date as the office, in its discretion, may establish. The debentures shall bear interest from that date at a rate approved by the State Treasurer, equal to either the rate applicable to the most recent issue of State General Fund bonds or that specified in Section 129130, which shall be payable on the dates as the office, in its discretion, may establish except in the case of bonds or other evidences of indebtedness as specified in Section 129130, and shall have the same maturity date as the loan which they insured. All debentures shall be exempt, both as to principal and interest, from all taxation now or hereafter imposed by the state or local taxing agencies, shall be paid out of the fund, which shall be primarily liable therefor, and shall be, pursuant to Section 4 of Article XVI of the California Constitution, fully and unconditionally guaranteed as to principal and interest by the State of California, which guaranty shall be expressed on the face of the debentures. In the event that the fund fails to pay upon demand, when due, the principal of or interest on any debentures issued under this chapter, the State Treasurer shall pay to the holders the amount thereof which is authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, and thereupon to the extent of the amount so paid the State Treasurer shall succeed to all the rights of the holders of the debentures. The fund shall be liable for repayment to the Treasury of any money paid therefrom pursuant to this section in accordance with procedures jointly established by the State Treasurer and the office.

(b) In the event of a default, any debenture issued under this article shall be paid on a par with general obligation bonds issued by the state.

**129165.** Notwithstanding any other provision of law relating to the acquisition, management or disposal of real property by the state, the office shall have power to deal with, operate, complete, lease, rent, renovate, modernize, insure, or sell for cash or credit, in its discretion, any properties conveyed to it in exchange for debentures as provided in this chapter; and notwithstanding any other provision of law, the office shall also have power to pursue to final collection by way of compromise or otherwise all claims against borrowers assigned by lenders to the office as provided in this chapter. All income from the operation, rental, or lease of the property and all

proceeds from the sale thereof shall be deposited in the fund and all costs incurred by the office in its exercise of powers granted in this section shall be met by the fund.

The power to convey and to execute in the name of the office deeds of conveyance, deeds of release, assignments and satisfactions of loans and mortgages, and any other written instrument relating to real or personal property or any interest therein acquired by the office pursuant to the provisions of this chapter may be exercised by the office or by any officer of the office appointed by it.

**129170.** No lender or borrower shall have any right or interest in any property conveyed to the office or in any claim assigned to it, nor shall the office owe any duty to any lender or borrower with respect to the management or disposal of this property.

**129172.** Notwithstanding any other provision of law, if, prior to foreclosing on any collateral provided by a borrower, the office institutes a judicial proceeding or takes any action against a borrower to enforce compliance with the obligations set out in the regulatory agreement, the contract of insurance, or any other contractual loan closing document or law, including, but not limited to, Section 129173, that remedy or action shall not constitute an action within the meaning of subdivision (a) of Section 726 of the Code of Civil Procedure, or in any way constitute a violation of the intent or purposes of Section 726 of the Code of Civil Procedure, or constitute a money judgment or a deficiency judgment within the meaning of Sections 580a, 580b, 580d, or subdivision (b) of Section 726 of the Code of Civil Procedure. However, these provisions of the Code of Civil Procedure shall apply to any judicial proceeding instituted, or nonjudicial foreclosure action taken by the office to collect the principal and interest due on the loan with the borrower.

**129173.** (a) In fulfilling the purposes of this article, as set forth in Section 129005, and upon making a determination that the financial status of a borrower may jeopardize a borrower's ability to fulfill its obligations under any insured loan transaction so as to threaten the economic interest of the office in the borrower or to jeopardize the borrower's ability to continue to provide needed health care services in its community, including, but not limited to, a declaration of default under any contract related to the transaction, the borrower missing any payment to its lender, or the borrower's accounts payable exceeding three months, the office may assume or direct managerial or financial control of the borrower in any or all of the following ways:

(1) The office may supervise and prescribe the activities of the borrower in the manner and under the terms and conditions as the office may stipulate in any contract with the borrower.

(2) Notwithstanding the provisions of the articles of incorporation or other documents of organization of a nonprofit corporation borrower, this control may be exercised through the removal and appointment by the office of members of the governing body of the borrower sufficient so that the new members constitute a voting majority of the governing body.

(3) In the event the borrower is a nonprofit corporation or a political subdivision, the office may request the Secretary of the California Health and Human Services Agency to appoint a trustee. The trustee shall have full and complete authority of the borrower over the insured project, including all property on which the office holds a security interest. No trustee shall be

appointed unless approved by the office. A trustee appointed by the secretary pursuant to this subdivision may exercise all the powers of the officers and directors of the borrower, including the filing of a petition for bankruptcy. No action at law or in equity may be maintained by any party against the office or a trustee by reason of their exercising the powers of the officers and directors of a borrower pursuant to the direction of, or with the approval of, the secretary.

(4) The office may institute any action or proceeding, or the office may request the Attorney General to institute any action or proceeding against any borrower, to obtain injunctive or other equitable relief, including the appointment of a receiver for the borrower or the borrower's assets, in the superior court in and for the county in which the assets or a substantial portion of the assets are located. The proceeding under this section for injunctive relief shall conform with the requirements of Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure, except that the office shall not be required to allege facts necessary to show lack of adequate remedy at law, or to show irreparable loss or damage. Injunctive relief may compel the borrower, its officers, agents, or employees to perform each and every provision contained in any regulatory agreement, contract of insurance, or any other loan closing document to which the borrower is a party, or any obligation imposed on the borrower by law, and require the carrying out of any and all covenants and agreements and the fulfillment of all duties imposed on the borrower by law or those documents.

A receiver may be appointed pursuant to Chapter 5 (commencing with Section 564) of Title 7 of Part 2 of the Code of Civil Procedure. In cooperation with the Attorney General, the office shall develop and maintain a list of receivers who have demonstrated experience both in the health care field and as a receiver. Upon a proper showing, the court shall grant the relief provided by law and requested by the office or the Attorney General. No receiver shall be appointed unless approved by the office. The office shall establish reporting requirements for receivers to ensure that the office is fully apprised of all costs incurred and progress made by the receiver. A receiver appointed by the superior court pursuant to this subdivision and Section 564 of the Code of Civil Procedure may, with the approval of the court, exercise all of the powers of the officers and directors of the borrower, including the filing of a petition for bankruptcy. No action at law or in equity may be maintained by any party against the office, the Attorney General, or a receiver by reason of their exercising the powers of the officers and directors of a borrower pursuant to the order of, or with the approval of, the superior court.

(5) The borrower shall inform the office in advance of all meetings of its governing body. The borrower shall not exclude the office from attending any meeting of the borrower's governing body.

(b) Other than the loan insured under this chapter, the office shall not be liable for any debt of a borrower, or to a borrower, as a result of the office asserting its legal remedies against a borrower insured under this chapter.

(c) It is the intent of the Legislature that this section is remedial in nature, and is applicable retroactively to any health facility construction loans in existence at the time of its enactment, to the extent that the application of this section does not unlawfully impair existing contract rights.

**129174.** (a) In the event a borrower has defaulted in making its payments on the loan insured by the office to the borrower's bond trustee, at any time thereafter, the office may do both of the following:



(1) Defeas a portion or all of the bonds or may purchase a portion or all of the bonds at a private or public sale or on the open market. For this purpose, the office may use any funds available, including, but not limited to, funds in the Health Facility Construction Loan Insurance Fund, funds that the office may receive either from settlement or recoveries from lawsuits, funds from the sale of assets of the borrower, or funds held by the borrower's bond trustee. If requested by the office, the Treasurer shall purchase the bonds on behalf of the office. Upon the purchase of any bonds under this section, the office shall direct the borrower's bond trustee to cancel the bonds purchased.

(2) Issue bonds used for the sole purpose of refunding any part or all of the defaulted bonds, provided that, in the opinion of the office, there are adequate present value savings to refund all or part of the defaulted bonds. If requested by the office, the Treasurer shall act as the issuer for this purpose.

(b) For the purposes of this section, "bonds" mean bonds, certificate of participation, notes, or other evidence of indebtedness of a loan insured by the office.

**129174.1.** In the event a loan insured by the office has gone into bankruptcy and that a plan has been proposed for adoption, upon a certification by the office that the insurance is in place and would be in place if the plan were adopted, then the office shall have the right to vote on the plan on behalf of the holders of the loan insured by the office.

#### **Article 4**

**129175.** Should a borrower be more than 10 days delinquent in paying the premium charges or inspection fees for insurance under this chapter, the office shall notify the borrower in writing. If that payment remains delinquent more than 30 days after the sending of the office's notice to the borrower, the office shall make every reasonable effort to notify the lender in writing. If that delinquency continues, on the 31st day after sending of the office's notice to the lender, the insurance shall be terminated and become null and void.

**129180.** The obligation to pay any subsequent premium charge for insurance shall cease, and all rights of the lender and the borrower under this chapter shall terminate as of the date of the notice, as herein provided, in the event that (a) any lender under a loan forecloses on the mortgaged property, or has otherwise acquired the project property from the borrower after default, but does not convey the property to the office in accordance with this chapter, and the office is given written notice thereof, or (b) the borrower pays the obligation under the loan in full prior to the maturity thereof, and the office is given written notice thereof.

**129185.** The office is authorized to terminate any insurance contract upon joint request by the borrower and the lender and upon payment of a termination charge that the office determines to be equitable, taking into consideration the necessity of protecting the fund. Upon the termination, borrowers and lenders shall be entitled to the rights, if any, that they would be entitled to under this chapter if the insurance contract were terminated by payment in full of the

## **Article 5**

**129200.** There is hereby established a Health Facility Construction Loan Insurance Fund, that shall be used by the office as a revolving fund for carrying out the provisions and administrative costs of this chapter. Notwithstanding Section 13340 of the Government Code, the money in the fund is hereby continuously appropriated to the office without regard to fiscal years for the purposes of this chapter.

**129205.** Moneys in the fund not needed for the current operations of the office under this chapter shall be invested pursuant to law. The office may, with the approval of the State Treasurer, purchase the debentures issued under this chapter. Debentures so purchased shall be canceled and not reissued.

**129210.** (a) The office's authorization to insure health facility construction, improvement, and expansion loans under this chapter shall be limited to a total of not more than three billion dollars (\$3,000,000,000).

(b) Notwithstanding the limitation in subdivision (a), the office may exceed the specific dollar limitation in either of the following instances:

(1) Refinancing a preexisting loan, if the refinancing results in savings to the health facility and increases the probability that a loan can be repaid.

(2) The need for financing results from earthquakes or other natural disasters.

**129215.** The Health Facility Construction Loan Insurance Fund, established pursuant to Section 129200, shall be a trust fund and neither the fund nor the interest or other earnings generated by the fund shall be used for any purpose other than those purposes authorized by this chapter.

### **Article 5.1**

**129220.** The office shall establish an Advisory Loan Insurance Committee which shall be comprised of nine members, eight of whom shall be appointed by the director of the office. Of the nine members, seven shall be appointed from outside state government and two shall be appointed from inside state government. The Director of Finance shall appoint one of the members chosen from inside state government. The members of the committee shall be qualified in the field of financial analysis, management, operations, or construction, improvement, or expansion of health facilities. Those members appointed from outside state government shall be reimbursed one hundred dollars (\$100) for each day spent in the performance of official duties. All members shall be reimbursed for reasonable and necessary expenses.

**129221.** The duties of the committee shall include, but not be limited to, the following:

(a) The committee shall assist the director of the office in formulating policy concerning financial analysis, management, operation, or construction, improvement, or expansion of health facilities, and shall, at the request of the director of the office, provide overall policy advice,

guidance, and recommendations. The committee shall also provide the office with advice and comment on the state plan prepared pursuant to Section 129020.

(b) The committee shall also review and analyze the feasibility, level of financial risk, and community benefit assessments made by the office on applications submitted for approval. The committee shall recommend to the director whether an application should be approved and whether any conditions should be attached to that approval. Loans that are currently insured by the office and subsequently are refinanced to obtain a lower interest rate or emergency working capital loans insured pursuant to Section 129091 shall not require the review of the committee.

## **Article 6**

**129225.** This article shall be known as, and may be cited as, the Community Mental Health Facilities Loan Insurance Law.

**129230.** It is the intent of the Legislature in enacting this article to encourage the development of facilities for community-based programs that assist mental health clients living in any institutional setting, including state and local inpatient hospitals, skilled nursing homes, intermediate care facilities, and community care facilities to move to more independent living arrangements. It is further the intent of the Legislature to encourage local programs to seek funding for facility development from private sources and with the assistance provided pursuant to this chapter.

To achieve this purpose in determining eligibility for loan insurance pursuant to this chapter, the following special provisions apply to facilities approved in the county Short-Doyle plan and meeting the intentions of this article:

(a) Facilities shall not require approval pursuant to Section 129295 by the statewide system of health facility planning, the area health planning agency, or the Health Advisory Council, for the issuance of loan insurance, unless specifically required for the facilities by the facility category of licensure.

(b) Notwithstanding subdivision (i) of Section 129050, any loan of under three hundred thousand dollars (\$300,000) for a nonprofit corporation as well as a political subdivision may be fully insured equal to the total construction cost, except a loan to any proprietary corporation that is insured pursuant to subdivision (d) of this section.

(c) The State Department of Mental Health or the local mental health program may provide all application fees, inspection fees, premiums and other administrative payments required by this chapter, except with respect to any loan to a proprietary corporation that is insured pursuant to subdivision (d) of this section.

(d) The borrower may be a proprietary corporation, provided that the facility is leased to the local mental health program for the duration of the insurance agreement. In these instances, all provisions in this chapter and this article that apply to a nonprofit corporation shall apply to the proprietary corporation, except as provided in subdivisions (b) and (c) of this section.

(e) For the purposes of this article, subdivision © of Section 129010 shall include the purchase of existing buildings.

(f) Facilities shall not require approval pursuant to Section 129020 by the statewide system of health facility planning, the area health planning agency, or the Health Advisory Council, for the issuance of loan insurance, until the director of the office and the Director of the Department of Mental Health determine that the state plan developed pursuant to Section 129020 adequately

and comprehensively addresses the need for community mental health facilities and that finding is reported to the appropriate policy committees of the Legislature.

**129235.** Loans of under three hundred thousand dollars (\$300,000) for any single facility shall have priority for obtaining loan insurance under the special provisions established pursuant to Section 129230.

**129240.** The total amount of loans that may be insured pursuant to this article shall not exceed fifteen million dollars (\$15,000,000).

**129245.** No loan insurance shall be provided pursuant to this article for the purpose of providing psychiatric inpatient services in an acute psychiatric hospital or a general acute care hospital.

**129250.** The Legislative Analyst shall review and comment on the utilization and effectiveness of this article in the annual budget analysis and in hearings.

**129255.** If, in construing Article 6 (commencing with Section 129225) of this chapter as applied to the other provisions of this chapter, any conflict arises, this article shall prevail over the other provisions of this chapter.

**129260.** If any provision of this article or the application thereof to any person or circumstances is held invalid, that invalidity shall not affect other provisions or applications of this article that can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

## **Article 7**

**129275.** This article shall be known and may be cited as the Small Facility Loan Guarantee for Developmental Disability Programs.

**129280.** It is the intent of the Legislature in enacting this article to encourage the development of facilities for community-based programs that assist developmentally disabled clients living in any institutional setting, including state and local inpatient hospitals, skilled nursing homes, intermediate care facilities, and community care facilities to move to more independent living arrangements. It is further the intent of the Legislature to encourage local programs to seek funding for facility development from private sources and with the assistance provided pursuant to this chapter.

To achieve this purpose in determining eligibility for loan insurance pursuant to this chapter, the following special provisions apply to facilities approved by area developmental disabilities boards and meeting the intentions of this article:

(a) Facilities shall not require approval pursuant to Section 129295 by the statewide system of health facility planning, the area health planning agency, or the Health Advisory Council, for the issuance of loan insurance, unless specifically required for the facilities by the facility category of licensure.

(b) Notwithstanding subdivision (i) of Section 129050, any loan of under three hundred thousand dollars (\$300,000) for a nonprofit corporation as well as a political subdivision may be fully insured equal to the total construction cost.

(c) Facilities shall not require approval pursuant to Section 129020 by the statewide system of health facility planning, the area health planning agency, or the Health Advisory Council, for the issuance of loan insurance, until the director of the office and the Director of the Department of Developmental Services determine that the state plan developed pursuant to Section 129020 adequately and comprehensively addresses the need for community developmental services facilities and that finding is reported to the appropriate policy committees of the Legislature.

**129285.** (a) Loans of under three hundred thousand dollars (\$300,000) for any single facility for six or fewer developmentally disabled shall have priority for obtaining loan insurance.

(b) The total amount of loans that may be insured pursuant to this article shall not exceed fifteen million dollars (\$15,000,000).

**129290.** If any provision of this article or the application thereof to any person or circumstances is held invalid, that invalidity shall not affect other provisions or applications of this article that can be given effect without the invalid provision or application, and to this end the provisions of this article are severable.

**129295.** The office shall establish a pilot program under this article of insuring loans to nonprofit borrowers that are not licensed to operate the facilities for which the loans are insured. The number of facilities for which loans are insured under this section shall not exceed 30 and the aggregate amount of loans insured under this section shall not exceed six million dollars (\$6,000,000), that may be in addition to the maximum loan insurance amount otherwise authorized by subdivision (b) of Section 129285. Construction of all projects assisted under this section shall be commenced on or before January 1, 1990.

The office may delay processing or decline acceptance of loan guarantee applications under this section if the volume of applications becomes too large for existing staff to process in a timely manner or if risks associated with the pilot program are determined by the office to be unreasonable.

The office shall submit a report to the Legislature, on or before January 1, 1991, specifically identifying potential problems and financial risks associated with insuring loans authorized by this section.

## **Article 9**

**129325.** It is the intent of the Legislature in enacting this article to assist rural hospitals that play a vital role in the health delivery system. The Legislature recognizes the difficulties rural

hospitals encounter meeting urban hospital standards while serving a small, rural, or tourist patient base. However, it is not the intent of the Legislature to provide assistance to facilities that can only survive with continuous subsidies. Rather, it is the intent of the Legislature, through this program, to encourage the development and transition to an alternative rural hospital model, and to provide essential access to services not available at the alternative rural hospital level.

**129330.** In each even-numbered year, the office shall contract for an actuarial study to determine the reserve sufficiency of funds in the Health Facility Construction Loan Insurance Fund. The study shall examine the portfolio of existing insured loans and shall estimate the amount of reserve funds that the office should reasonably have available to be able to respond adequately to potential foreseeable risks, including extraordinary administrative expenses and actual defaults. Actuarial study contracts shall be exempt from Section 10373 of the Public Contract Code and shall be considered sole-source contracts.

**129335.** (a) In each odd-numbered year when the reserve balance in the fund is projected to be in excess of that actuarially needed, the office may, subject to authority in the Budget Act, grant excess reserve funds to rural hospitals.

(b) Whenever the office administers the grant program, it shall do so by a competitive process where potential grantees have sufficient time to apply. Priority for funds shall be given to alternative rural hospitals and rural hospitals that are sole community providers. Priority shall also be given to applicants that are otherwise financially viable, but request one-time financial assistance for equipment expenditures or other capital outlays. The maximum amount of any grant for a single project in any one grant year shall be two hundred fifty thousand dollars (\$250,000).

(c) For the purposes of this article, "rural hospital" shall have the same meaning as contained in subdivision (a) of Section 124840.

## **Article 10**

**129350.** This article shall be known and may be cited as the Community Health Center Facilities Loan Insurance Law.

**129355.** (a) "Community health center facilities," as used in this article, means those licensed, nonprofit primary care clinics as defined in paragraph (1) of subdivision (a) of Section 1204.

(b) Notwithstanding subdivision (i) of Section 129050, any loan in the amount of five million dollars (\$5,000,000) or less for a community health center facility pursuant to this chapter may be insured up to 95 percent of the total construction cost.

(c) Community health center facilities applying for any loan insurance pursuant to this chapter, may use existing equity in buildings, equipment, and donated assets, including, but not limited to, land and receipts from expenses related to the capital outlay for the project, notwithstanding the date of occurrence to meet the equity requirements of this chapter. In determining the value

of the equity in any donated property, the office may use the original purchase price or the current appraised value.

(d) Any state plan referred to in Section 129020 developed by the office shall include a chapter identifying any impediments that preclude small facilities from utilizing the California Health Facility Construction Loan Insurance Program. The state plan shall also include specific programmatic remedies to enable small projects to utilize the program if impediments are found.